IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3100 OF 2004.

IN

SUIT NO.2160 OF 2004

Kishor Karsandas Tejura & others. ... Plaintiffs..

vs.

Bhagyavati Amratlal. .... Defendant.

Mr.A.Y.Bookwala i/b. M/s.Malvi Ranchoddas & Co., for Plaintiffs.

Mr.N.G.Thakkar i/b. M/s.Thakore Jariwala & Associates, for Defendant.

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CORAM: D.K.DESHMUKH,J.

DATED: 13th January, 2006

P.C.:-

1. This is a notice of motion taken out by the plaintiffs for direction to defendant to furnish appropriate security in respect of the claims. The plaintiffs have filed the suit for recovery of the amounts which are mentioned in the prayer clauses of the plaint. The defendant

is sued in her capacity as Guarantor as also the legatee of the estate of her husband and is also a party to the Contract at Exhibit C. The plaintiffs relying on the "E-Mail" message at Exhibit HH dated 4.7.2001 to the plaint states that the claim of the plaintiffs was admitted by the husband of the defendant. Perusal of the letter at Exhibit GG dated 28.6.2001 from the plaintiff no.1 to the husband of defendant and reply at Exhibit HH of the husband of defendant prima facie shows that the claim of the plaintiffs was admitted by the husband of the defendant. The defence of the defendant is that the document at Exhibit GG and the document at Ex.HH are fabricated by the plaintiffs. Their claim is based on the submission that those letters are not referred to in any subsequent correspondence between the parties. In my opinion, considering that the communication at Exhibit GG and Exhibit HH are E-mails, at this stage at least it cannot be said that they are fabricated documents. It was contended before me that even if the document at Exhibit HH is taken to be an acknowledgment of the liability by the husband of the defendant then that acknowledgment is not within a period of three years from the date of arising of the liability. But that submission also appears to be without any substance looking to the averments in the plaint and documents produced on record because it appears that from time to time the liability was acknowledged. It was also submitted that the suit as against the defendant in her capacity as guarantor is barred by Law of Limitation. This contention is not raised

in reply filed to this notice of motion. In any case the defendant is also sued in her capacity as legatee of her deceased husband. The averments in paragraph 3 of the affidavit filed in support of the notice of motion shows that considerable property of the husband was inherited by the widow-defendant. Therefore, it appears at least prima facie that the suit claim is not barred by the Law of limitation as claimed by the defendant.

2. The plaintiff is claiming an amount in excess of Rs.7 crores. The defendant is the permanent resident of Portugal. According to the plaintiffs, she does not have any property in India which would be sufficient to satisfy the claim of the plaintiffs. The plaintiffs have made clear averments in paragraph 3 of the Affidavit filed in support of notice of motion that after the death of her husband the defendant is selling the property. These averments have not been denied by the defendant in the reply filed to this notice of motion. In my opinion, taking overall view of the matter therefore, it will be appropriate to direct the defendant to furnish security so that the decree that may be passed in favour of the plaintiffs may not be rendered merely a paper decree. The notice of motion is therefore, granted in terms of prayer clause (a). The defendant is directed to furnish security in the amount of Rs.7 crores. Eight weeks time is granted to defendant to furnish security. The notice of motion is disposed of.